

Nawab Usmanali Khan

Vs

Sagarmal

Civil Appeals Nos. 568 and 767 of 1963

(K. Subha Rao, J. C. Shah, R. S. Bachawat JJ)

26.02.1965

JUDGMENT

BACHAWAT, J.

The appellant is the Ruler of the former Indian State of Jaora. He had money dealings with the respondent. By an agreement dated February 23, 1957, the appellant and the respondent agreed to refer their disputes regarding those dealings to the arbitration of Lala Durgashankar. On the same date, the arbitrator made an award. By this award, the arbitrator found that a sum of Rs. 1,60,000 was due to the respondent from the appellant, and directed that this sum would be payable in eight quarterly instalments, the first four instalments to be of Rs. 21,000 each and the next four instalments to be of Rs. 19,000 each, the amount of interest would be payable in another quarterly instalment, the respondent would have a first charge on the sums receivable by the appellant from the Government of India as privy purse, and would be entitled to realise those sums under a letter of authority issued by the appellant, and if the Government would raise any objection to the payment, the respondent would have the right to realise the dues from the personal property of the appellant. Some of the items of the loans in respect of which the award was made were secured on lands and ornaments. The award therefore provided :

"The documents relating to debts obtained on lands and ornaments shall remain as before till the payment of the debts and they shall also remain as securities till then, and the Nawab Sahab shall have no right to transfer the land."

The award was signed by the arbitrator and also by the appellant and the respondent.

On the same day, the arbitrator filed the award in the Court of the District Judge, Ratlam. Notice of filing of the award under s. 14 of the Indian Arbitration Act, 1940 was duly served on the parties, On March 9, 1957, an agent of the appellant filed a written submission accepting the award and requesting the Court to pass a decree in terms of the award. But on the same day, an application was made by another agent of the appellant intimating that steps would be taken for setting aside the award. The Court fixed March 23, 1957 for filing the objection. The time was subsequently extended up to April 2, 1957. On that day, an application was filed on behalf of the appellant praying for setting aside the award. But on April 5, 1957, an application was filed on behalf of the appellant withdrawing the objections and asking the Court to pass a decree in terms of the award, subject to the modification that the amount of the award would be payable in quarterly instalments of Rs. 13,000 each. This application was signed by the respondent in token of his consent to the modification of the amount of the instalments. On April 30, 1957, the arbitrator filed the relevant papers. On the same day, an agent of the appellant filed an application praying for setting aside the

compromise and the award. The case was fixed for hearing on June 19, 1957. On that date, the Court received by registered post an application from the appellant withdrawing the objections and praying for an order in accordance with the compromise application filed on April 5, 1957. In the circumstances, on June 19, 1957, the Court recorded the compromise and passed a decree in terms of the award as modified by the compromise. The appellant filed in the Madhya Pradesh High Court Appeal No. 81 of 1957 under s. 39 of the Indian Arbitration Act, 1940 against the order dated June 19, 1957 treating it as an order refusing to set aside the award. The appellant also filed Appeal No. 82 of 1957 under O. 43(1)(m) of the Code of Civil Procedure against the order dated June 19, 1957 recording the compromise.

In the meantime, the respondent started Execution Case No. 5 of 1957, and on September 9, 1957 obtained an ex parte order for transfer of the decree to the Court of the District Judge, Delhi. On November 1, 1957, the Central Government gave a certificate under s. 86(3) read with s. 87B of the Code of Civil Procedure, 1908 consenting to the execution of the decree against the properties of the appellant. On November 8, 1957, the District Judge, Delhi passed a prohibitory order under O. 21, r. 46 of the Code of Civil Procedure in respect of sums payable to the appellant on account of the privy purse. By letter dated December 26, 1957, the Central Government informed the appellant of the prohibitory order. On January 8, 1958, the appellant applied to the Court of the District Judge, Ratlam praying for vacating the order of transfer of the decree and for cancellation of the certificate issued under O. 21, r. 6(b) of the Code of Civil Procedure. By order dated March 15, 1958, the Court recalled the decree and cancelled the certificate as prayed for, on the ground that the amount receivable by the appellant on account of his privy purse was not attachable. The respondent preferred Appeal No. 33 of 1958 before the High Court against this order. By another order dated January 7, 1959, the District Judge, Ratlam dismissed certain objections of the appellant filed in Execution Case No. 2 of 1958. We are informed that the appellant filed before the High Court Appeal No. 13 of 1959 from this order.

Appeals Nos. 81 and 82 of 1957, 33 of 1958 and 13 of 1959 were heard and disposed of by the High Court by a common judgment on October 10, 1960. The High Court dismissed Appeals Nos. 81 and 82 of 1957 and 13 of 1959 preferred by the appellant and allowed Appeal No. 33 of 1958 preferred by the respondent. The appellant has referred to this Court Civil Appeal No. 568 of 1963 against the order of the High Court passed in Appeal No. 33 of 1958. He has also preferred Civil Appeal No. 767 of 1963 from the order of the High Court passed in Appeals Nos. 81 and 82 of 1957. Civil Appeals Nos. 568 and 767 of 1963 were heard together, and are being disposed of by this common judgment.

On behalf of the appellant, Mr. Pathak raised three contentions only. He argued that : (1) the award affected immovable property of the value of more than Rs. 100, and as it was not registered, no decree could be passed in terms of the award; (2) the proceedings under s. 14 of the Indian Arbitration Act, 1940 were incompetent in the absence of the consent of the Central Government under s. 86(1) read with s. 87B, Code of Civil Procedure, and the decree passed in those proceedings is without jurisdiction and null and void; and (3) the amount receivable by the appellant from the Central Government as his privy purse is a political pension within the meaning of s. 60(1)(g), Code of Civil Procedure, and is not liable to attachment or sale in execution of the decree. These contentions are disputed by Mr. Iyengar on behalf of the respondent. The first two contentions of Mr. Pathak arise in Civil Appeal No. 767 of 1963 and the third contention arises in Civil Appeal No. 568 of 1963.

The first contention raised by Mr. Pathak must be rejected. The award stated that the existing

documents relating to debts obtained on lands would remain as before, and they would remain as securities till payment of the debts and the appellant would have no right to transfer the land. This portion of the award stated an existing fact. It did not create, or of its own force declare any interest in any immovable property. Consequently, the document did not come within the purview of s. 17 of the Indian Registration Act, 1908, and was not required to be registered.

The second contention of Mr. Pathak raises questions of construction of ss. 86 and 87B of the Code of Civil Procedure. By reason of s. 86(1) read with s. 87B, no Ruler of any former Indian State "may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government." Section 86(2) provides that the requisite consent may be given with respect to a specified suit or with respect to several specified suits or with respect to all suits of any specified class or classes, Section 86 plainly deals with a special class of suits, and this conclusion is reinforced by the heading of Part IV, "Suit in Particular Cases", in which ss. 86 and 87B appear. Order 4, rule 1, Code of Civil Procedure provides that every suit shall be instituted by presenting a plaint to the Court or such other officer as it appoints in this behalf. In the context of s. 176 of the Government of India Act, 1935, Mahajan and Mukherjea, JJ, observed that the expression "sue" means the "enforcement of a claim or civil right by means of legal proceedings", see *Province of Bombay v. K. S. Advani and others* [[1950] S.C.R. 621, at pp. 661, 697]. But in the context of the Indian Limitation Act, 1908, Lord Russell of Killowen observed in *Hansraj Gupta v. Official Liquidator, Dehra Dun-Mussorie Electric Tramway Co.* [[1932] L.R. 60 I.A. 13, 19] :

"The word 'suit' ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint."

And construing s. 86 of the Code of Civil Procedure, Shah, J. speaking on behalf of this Court observed in *Bhagwat Singh v. State of Rajasthan* [A.I.R. [1964] S.C. 444 at pp. 445, 446] :

"The appellant is recognised under Art. 336(22) of the Constitution as a Ruler of an Indian State, but s. 86 in terms protects a Ruler from being 'sued' and not against the institution of any other proceeding which is not in the nature of a suit. A proceeding which does not commence with a plaint or petition in the nature of plaint, or where the claim is not in respect of dispute ordinarily triable in a Civil Court, would prima facie not be regarded as falling within s. 86, Code of Civil Procedure."

Now, a proceeding under s. 14 read with s. 17 of the Indian Arbitration Act, 1940 for the passing of a judgment and decree on an award does not commence with a plaint or a petition in the nature of a plaint, and cannot be regarded as a suit and the parties to whom the notice of the filing of the award is given under s. 14(2) cannot be regarded as "sued in any Court otherwise competent to try the suit", within the meaning of s. 86(1) read with s. 87B, Code of Civil Procedure. Accordingly, the institution of this proceeding against the Ruler of a former Indian State is not barred by s. 86(1) read with s. 87B. Section 141, Code of Civil Procedure does not attract the provisions of s. 86(1) read with s. 87B to the proceedings under s. 14 of the Indian Arbitration Act. Section 86(1) read with s. 87B confers upon the Rulers of former Indian States substantive rights of immunity from suits. Section 141 makes applicable to other proceedings only those provisions of the Code which deal with procedure and not those which deal with substantive rights. Nor does s. 41(a) of the Indian Arbitration Act, 1940 carry the matter any further. By that section, the provisions of the Code of Civil Procedure, 1908 are made applicable to all proceedings before the Court under the Act. Now, by its own language s. 86(1) applies to suits only, and s. 141, Code of Civil Procedure does not attract the provisions of s. 86(1) to proceedings other than suits. Accordingly, by the conjoint

application of s. 41(a) of the Indian Arbitration Act and ss. 86(1) and 141 of the Code of Civil Procedure, the provisions of s. 86(1) are not attracted to a proceeding under s. 14 of the Indian Arbitration Act, 1940. It follows that the Court was competent to entertain the proceedings under s. 14 of the Indian Arbitration Act, 1940 and to pass a decree against the appellant in those proceedings, though no consent to the institution of those proceedings had been given by the Central Government. A sovereign foreign State and a Ruler of such State may enjoy a wider immunity from legal proceedings other than suits under the rules of International Law recognised by our Courts, but the appellant is not now a Ruler of a sovereign State, and cannot claim immunity from proceedings other than suits. The second contention of Mr. Pathak must, therefore, be rejected.

The third contention of Mr. Pathak raises the question whether an amount payable to a Ruler of a former Indian State as privy purse is a political pension within the meaning of s. 60(1)(g), Code of Civil Procedure. The word "pension" in s. 60(1)(g), Code of Civil Procedure implies periodical payments of money by the Government to the pensioner. See *Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Ltd.* [(4) [1931] L.R. 58 I.A. 215, 219 and 220] And in *Bishambhar Nath v. Nawab Imdad Ali Khan* [[1890] L.R. 17, I.A. 181, 186], Lord Watson observed :

"A pension which the Government of India has given a guarantee that it will pay, by a treaty obligation contracted with another sovereign power, appears to their Lordships to be, in the strictest sense, a political pension. The obligation to pay, as well as the actual payment of the pension, must, in such circumstances, be ascribed to reasons of State policy."

Now, the history of the integration and the ultimate absorption of the Indian States and of the guarantee for payment of periodical sums as privy purse to the Rulers of the former Indian States are well-known. Formerly Indian States were semi-sovereign vassal States under the suzerainty of the British Crown. With the declaration of Independence, the paramountcy of the British Crown lapsed as from August 15, 1947, and the Rulers of Indian States become politically independent sovereigns. The Indian States parted with their sovereignty in successive stages, firstly on accession to the Dominion of India, secondly on integration of the States into sizeable administrative units and on closer accession to the Dominion of India, and finally on adoption of the Constitution of India and extinction of the separate existence of the States and Unions of States. During the second phase of this political absorption of the States, the Rulers of the Madhya Bharat States including the Ruler of Jaora State entered into a Covenant on April 22, 1948 for the formation of the United State of Gwalior, Indore and Malwa (Madhya Bharat). By Art. II of the Covenant, the Covenanting States agreed to unite and integrate their territories into one State. Article VI provided that the Ruler of each Covenanting State shall not later than July 1, 1948 make over the administration of the State to the Rajpramukh and thereupon all rights, authority and jurisdiction belonging to the Ruler and appertaining or incidental to the Government of the State would vest in the United State of Madhya Bharat. Article XI(1) provided that "the Ruler of each Covenanting State shall be entitled to receive annually from the revenues of the United State for his privy purse the amount specified against that Covenanting State in Schedule I." In Sch. I, a sum of Rs. 1,75,000 was specified against the State of Jaora. Article XI(2) provided that the amount of the privy purse was intended to cover all the expenses of the Ruler and his family including expenses of the residence, marriage and other ceremonies and neither be increased nor reduced for any reason whatsoever. Article XI(3) provided that the Rajpramukh would cause the amount to be paid to the Ruler in four equal instalments at the beginning of each quarter in advance. Article XI(4) provided that the amount would be free of all taxes whether imposed by the Government of the United State or by the Government of India. Article XIII of the Covenant secured to the Ruler of each Covenanting State all personal privileges,

dignities and titles then enjoyed by them. Article XIV guaranteed the succession, according to law and custom, to the gaddi of each Covenanting State and to the personal rights, privileges, dignities and titles of the Ruler. The Covenant was signed by all the Rulers of the Covenanting States. At the foot of the Covenant, it was stated that "The Government of India hereby concur in the above Covenant and guarantee all its provisions." In confirmation of this consent and guarantee, the Covenant was signed by a Secretary to the Government of India.

On the coming into force of the Constitution of India, the territories of Madhya Bharat became an integral part of India. Article 291 of the Constitution provided :

"Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse :-

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income."

In view of the guarantee by the Government of the Dominion of India to the Ruler of Jaora State in the Covenant for the formation of the United State of Madhya Bharat, the payment of the sums specified in the covenant as privy purse to the Ruler became charged on the Consolidated Fund of India, and became payable to him free from all taxes on income. Article 362 provides that in the exercise of the legislative and executive powers, due regard shall be had to the guarantee given in any such covenant as is referred to in Art. 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. Article 363(1) provides, that notwithstanding anything contained in the Constitution, the Courts would have no jurisdiction in any dispute arising, out of any provision in any covenant entered into by any Ruler of an Indian State to which the Government of the Dominion of India was a party, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such covenant. Article 366(22) provides that the expression "Ruler" in relation to an Indian State means a person by whom the covenant referred to in Art. 299(1) was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler.

Now, the Covenant entered into by the Rulers of Madhya Bharat States was a treaty entered into by the Rulers of independent States by which they gave up their sovereignty over their respective territories and vested it in the new United State of Madhya Bharat. The Covenant was an act of State, and any violation of its terms cannot form the subject of any action in any municipal courts. The guarantee given by the Government of India was in the nature of a treaty obligation contracted with the sovereign Rulers of Indian States and cannot be enforced by action in municipal courts. Its sanction is political and not legal. On the coming into force of the Constitution of India, the guarantee for the payment of periodical sums as privy purse is continued by Art. 291 of the Constitution, but its essential political character is preserved by Art. 363 of the Constitution, and the obligation under this guarantee cannot be enforced in any municipal court. Moreover, if the President refuses to recognise the person by whom the covenant was entered into as the Ruler of the State, he would not be entitled to the amount payable as privy purse under Art. 291. Now, the periodical payment of money by the Government to a Ruler of a former Indian State as privy purse

on political considerations and under political sanctions and not under a right legally enforceable in any municipal court is strictly a political pension within the meaning of s. 60(1)(g) of the Code of Civil Procedure. The use of the expression "privy purse" instead of the expression "pension" is due to historical reasons. The privy purse satisfies all the essential characteristics of a political pension, and as such, is protected from execution under s. 60(1)(g), Code of Civil Procedure. Moreover, an amount of the privy purse receivable from the Government cannot be said to be a debt or other property over which or the proceeds of which he has disposing power within the main part of s. 60(1), Code of Civil Procedure. It follows that the third contention of Mr. Pathak must be accepted, and it must be held that the amounts of the privy purse are not liable to attachment or sale in execution of the respondent's decree. The third contention is raised in Civil Appeal No. 568 of 1963 arising out of Appeal No. 33 of 1958. It follows that Civil Appeal No. 568 of 1963 must be allowed. All the contentions raised in Civil Appeal No. 767 of 1963 arising from Appeals Nos. 81 and 82 of 1957 fail, and accordingly this appeal must be dismissed.

In the result, Civil Appeal No. 568 of 1963 is allowed, the order of the High Court in Appeal No. 33 of 1958 is set aside and the order of the District Judge dated March 15, 1958 is restored with costs in this Court only. Civil Appeal No. 767 of 1963 is dismissed with costs.

Appeal 568 of 1963 allowed.

Appeal 767 of 1963 dismissed.

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